

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENVILLE DIVISION**

Diego Rivarola,)	
)	
Petitioner,)	
)	
vs.)	Civil Action No. 6:23-cv-6822-TMC
)	
Warden FCI Edgefield,)	ORDER
)	
Respondent.)	
)	
_____)	

Petitioner Diego Rivarola (“Petitioner”), proceeding *pro se*, filed this petition for relief pursuant to 28 U.S.C. § 2241. (ECF No. 1). In accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2)(c) (D.S.C.), this matter was referred to a magistrate judge for all pretrial proceedings. On February 28, 2024, Respondent filed a motion to dismiss the petition as moot. (ECF No. 12). The magistrate judge issued an order pursuant to *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975), advising Petitioner of Respondent's motion and the possible consequences if Petitioner failed to adequately respond thereto. (ECF No. 13). The *Roseboro* order was mailed to Petitioner at the address he provided the court, (ECF No. 14), and has not been returned to the court as undeliverable. Therefore, Petitioner is presumed to have received the *Roseboro* order. Nevertheless, to date, Petitioner failed to file any response to Respondent’s motion to dismiss or to the magistrate judge’s *Roseboro* order.

On April 8, 2024, in light of Petitioner’s *pro se* status, the magistrate judge entered an order *sua sponte* granting Petitioner additional time to respond to the motion to dismiss. (ECF No. 16). Once again, the order was mailed to Petitioner at the address he provided the court, (ECF No. 17), and was not returned to the court as undeliverable. Petitioner, however, did not respond.

On May 6, 2024, the magistrate judge issued a Report and Recommendation (“Report”), recommending that the petition be dismissed with prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute. (ECF No. 19 at 3). Petitioner was advised of his right to file objections to the Report. *Id.* at 4. On May 6, 2024, the Report was mailed to Petitioner at the same address he had provided the court. (ECF No. 20). The Report was subsequently returned marked “not deliverable” and “unable to forward.” (ECF Nos. 22, 23). To this date, Plaintiff has not advised the court of any changes to his address, despite having been advised of his duty to inform the Court in writing of any change of address and of the consequences of failing to do so. (ECF No. 6 at 2). Petitioner has not submitted any objections, and the time for Petitioner to object to the Report has now expired.

The magistrate judge’s recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. *Wimmer v. Cook*, 774 F.2d 68, 72 (4th Cir. 1985) (quoting *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976)). Nevertheless, “[t]he district court is only required to review *de novo* those portions of the report to which specific objections have been made, and need not conduct *de novo* review ‘when a party makes general and conclusory objections that do not direct the court to a specific error in the magistrate judge’s proposed findings and recommendations.’” *Farmer v. McBride*, 177 Fed. App’x 327, 330–31 (4th Cir. April 26, 2006) (quoting *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982)); *see also* *Elijah v. Dunbar*, 66 F.4th 454, 460 (4th Cir. 2023) (noting “an objecting party ‘must object to the finding or recommendation on that issue with sufficient specificity so as reasonably to alert the district court of the true ground for the objection’” and “‘an objection stating only ‘I object’ preserves no issue for review’” (quoting *United States v. Midgette*, 478 F.3d 616,

622 (4th Cir. 2007); *Lockert v. Faulkner*, 843 F.2d 1015, 1019 (7th Cir. 1988))). Thus, “in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 Advisory Committee’s note). The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1). However, in the absence of specific objections to the Report and Recommendation, this Court is not required to give any explanation for adopting the recommendation. *Greenspan v. Bros. Prop. Corp.*, 103 F. Supp. 3d 734, 737 (D.S.C. 2015) (citing *Camby v. Davis*, 718 F.2d 198, 199–200 (4th Cir. 1983)). Furthermore, failure to file specific written objections to the Report results in a party’s waiver of the right to appeal the district court’s judgment based upon that recommendation. *See Elijah*, 66 F.4th at 460 (quoting *Lockert*, 843 F.2d at 1019); *Martin v. Duffy*, 858 F.3d 239, 245 (4th Cir. 2017).

After a careful and thorough review of the Report and the record under the appropriate standards, as set forth above, the Court agrees with the conclusions of the magistrate judge and finds no reason to deviate from the magistrate judge’s recommended disposition as set forth in the Report. Accordingly, the court **ADOPTS** the Report (ECF No. 19), which is incorporated herein. This action is hereby **DISMISSED** without prejudice and without issuance and service of process.

Finally, a certificate of appealability will not issue to a prisoner seeking habeas relief absent “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). A prisoner satisfies this standard by demonstrating that reasonable jurists would find both that his constitutional claims are debatable and that any dispositive procedural rulings by the district court are also debatable or wrong. *See Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003); *Rose v. Lee*, 252

F.3d 676, 683 (4th Cir. 2001). In this case, the court finds that Petitioner has failed to make a substantial showing of the denial of a constitutional right. Accordingly, the court declines to issue a certificate of appealability.

IT IS SO ORDERED.

s/Timothy M. Cain
United States District Judge

Anderson, South Carolina
June 28, 2024